

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Verizon Telephone Companies)	WC Docket No. 02-237
)	
Section 63.71 Application to Discontinue)	
Expanded Interconnection Service Through)	
Physical Collocation)	

PETITION FOR CLARIFICATION

Qwest Communications Corporation (“Qwest”) hereby files this petition for clarification of the decision of the Federal Communications Commission (“Commission” or “FCC”) in Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation.¹ In the *Order*, the FCC granted an application by the Verizon Telephone Companies (“Verizon Companies” or “Verizon”) to withdraw physical collocation services from their interstate tariffs. Qwest has physical collocation agreements with the Verizon Companies as part of its Section 251 interconnection agreements with those companies.² Many of these agreements incorporate Verizon’s interstate tariffs for the purpose of determining the rate for DC power provided to the collocation space. Qwest did not and does not disagree with Verizon’s right to withdraw its federal tariffs so long as Qwest’s rights under its interconnection agreements are not undermined. It appears that the Commission’s *Order* granting the Verizon Section 214 application does not compromise those rights.

¹ FCC 03-256 (rel. Oct. 22, 2003) (“*Order*”).

² 47 U.S.C. § 251.

However, Qwest objected to a simple grant of the Verizon Companies' application to discontinue the collocation services in Verizon's interstate tariffs without making it clear that Verizon's obligations under its interconnection agreements are not affected by withdrawal of its federal tariffs. The language of the *Order* provides protection to Qwest against such a result. However, certain ambiguities in the *Order* may make it more difficult for Qwest to exercise its rights under the negotiated, "binding" interconnection agreements in accordance with the terms of the Telecommunications Act of 1996.³ Qwest files this petition requesting that the Commission clarify its *Order* along the lines set forth below in order to make it clear that the contractual rights of Qwest and other interconnecting parties are fully protected in the manner detailed in this petition.

Qwest has entered into interconnection agreements with the Verizon Companies in eight states affected by Verizon's federal collocation tariffs (FCC 1 and FCC 11). All of these agreements include collocation provisions which reference the tariffs of the Verizon Companies for terms such as pricing. In some cases, the agreement clearly and explicitly delineates Qwest's right to purchase under Verizon's interstate tariffs, though other agreements are vague as to whether Qwest must purchase from the Verizon interstate or intrastate tariffs.⁴ Regardless, Qwest has a contractual right to the rate specified in the tariff referenced in the negotiated, "binding" interconnection agreements. Qwest participated in the proceeding involving Verizon's withdrawal of its interstate tariff to protect that contractual right.

³ 47 U.S.C. § 252(a)(1).

⁴ See Bell Atlantic-Washington, D.C., Inc and AT&T Communications of Washington, D.C., Inc., Agreement dated August 22, 1997, Table 1; MCI-Bell Atlantic Massachusetts Interconnection Agreement, dated September 29, 1999, Attachment V. These and other Qwest/Verizon agreements have been opted into by Qwest under 47 U.S.C. § 252(i).

In its *Order* granting the Verizon application, the Commission found that, when a party incorporates a tariff by reference into an interconnection agreement, it does so with full knowledge that the rates specified in the tariff can change.⁵ Accordingly, the Commission found that “the impact on interconnection agreement terms is thus not a basis for denying changes to tariffed rates, terms and conditions[.]”⁶ The Commission found, however, that if interconnectors were disadvantaged by Verizon’s actions, they were in all events entitled to purchase collocation and collocation services at TELRIC-based rates obtained as part of interconnection.⁷ To the extent that Verizon was misapplying its interstate tariff, injured parties were invited to file complaints under Section 208 of the Communications Act.⁸

Of course, when the negotiated agreement incorporates by reference tariffed rates, there is a significant difference between a rate change in a tariff and elimination of the referenced tariff altogether. While parties to an interconnection agreement that incorporated a tariff rate must of necessity have contemplated that the rate might change, they could not reasonably be held to envision that the incorporated tariff would disappear completely. Upon reading the *Order*, Qwest sees that the *Order* preserves several rights that can be exercised by Qwest in paying for collocation under its interconnection agreements with the Verizon Companies:

- Qwest has the right to demand that collocation services for which the price was referenced from a Verizon FCC tariff be provided to it at TELRIC rates.

⁵ *Order* ¶ 38.

⁶ *Id.* The Commission also found that interconnectors such as Qwest can be adequately protected through TELRIC-based rates obtained through the interconnection agreements. *Id.* ¶ 22.

⁷ *Id.*

⁸ *Id.* ¶ 24 n.82.

- Qwest has the contractual right to continue to pay for collocation services at the last posted FCC tariff rate for all collocation services where the rate from an interstate tariff was incorporated into the interconnection agreement.
- Qwest has the right to file a complaint pursuant to Section 208 of the Communications Act for any charges under the Verizon interstate tariffs incorporated into Qwest's interconnection agreements, which have been imposed inconsistently with the terms of the tariffs or with the Communications Act or the FCC's rules.

These basic, well-established principles provide interconnectors with the full protections under the Communications Act.

In this proceeding, Verizon has repeatedly explained its intentions to make collocation available only under the rates of its various state collocation tariffs. Because of the possibility of confusion with regard to the foregoing propositions, Qwest requests that the FCC clarify its *Order* and specify that these three principles do in fact govern Verizon's future performance under its interconnection agreements.

Respectfully submitted,

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November 21, 2003

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **PETITION FOR CLARIFICATION** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via email on Jennifer McKee of the Wireline Competition Bureau, 3) served, via email on the FCC's duplicating contractor Qualex International, Inc., and 4) served, via First Class United States mail, postage prepaid, on the remaining parties listed on the attached service list.

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November 21, 2003

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